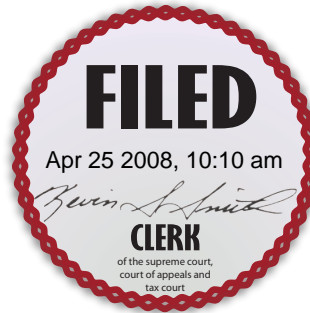


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JEROME LEE FINE,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 53A04-0709-CR-538

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Marc R. Kellams, Judge  
Cause No. 53C02-0201-FB-63

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**April 25, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Jerome Fine appeals the reinstatement of his suspended sentence following the revocation of his probation. We affirm.

### **Issue**

Fine raises one issue, which we restate as whether he was properly sentenced following the revocation of his probation.

### **Facts**

In 2003, Fine pled guilty to Class B felony robbery and was sentenced to twenty years with twelve years suspended. Fine served the executed portion of his sentence and was released on probation in 2006. On July 5, 2007, the State filed a second amended petition to revoke Fine's suspended sentence. The petition alleged that Fine twice used cannabinoids, failed to report to three drug screens, and failed to successfully complete treatment. At a hearing, Fine admitted to the alleged violations. The trial court ordered Fine to serve the remainder of his suspended sentence based in part on the fact that he had been "involved in the criminal justice system to varying degrees for the past sixteen years and [had] been given numerous opportunities for rehabilitation." Tr. p. 27. Fine now appeals.

### **Analysis**

Fine argues that the trial court erred by reinstating the remainder of his suspended sentence. We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). "A defendant may not collaterally attack a sentence on appeal from a

probation revocation.” Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). Serving a sentence in a probation program is not a right, but rather a “matter of grace” and a “conditional liberty that is a favor.” Id.

As long as the proper procedures have been followed in conducting a probation revocation hearing pursuant to Indiana Code Section 35-38-2-3, the trial court may order execution of a suspended sentence upon a finding of any violation by a preponderance of the evidence. Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). Specifically, Indiana Code Section 35-38-2-3(g) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person’s probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Because it is undisputed that Fine violated the terms of his probation, it was within the trial court’s discretion to determine and impose a sanction under Indiana Code Section 35-38-2-3(g). See Abernathy, 852 N.E.2d at 1022. The trial court ordered execution of the entire remaining suspended sentence as permitted by Indiana Code Section 35-38-2-3(g)(3). Fine argues that the trial court failed “to give due weight to the mitigation” he offered. Appellant’s Br. p. 5. These factors included a renewed faith, his marriage, and his young daughter. Although these considerations may have been very

important to Fine, they did not persuade him to comply with the terms of his probation. Fine admitted to the four alleged probation violations, which included using illegal drugs, repeatedly missing drug screens, and failing to complete a treatment program. In addition to the probation violation, Fine appears to have an ongoing, if not extensive, criminal history.<sup>1</sup> It was within the trial court's discretion to reinstate the entire sentence, and we affirm that decision.

### **Conclusion**

It was within the trial court's discretion to order Fine to serve the remainder of his suspended sentence. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.

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<sup>1</sup> Fine did provide us with a copy of the pre-sentence investigation report on appeal.